PART C
CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		Terms and Conditions Section 7.1.1 (which is partly in dispute) neither party's liability to the other party is limited for any indemnified third party claims, including end user claims. Further, under agreed-on Terms and Conditions Section 7.1.3, both parties have agreed to assert tariff limitations against end user claims, for both their own and the other Party's benefit. SWBT's proposed language would alter this balanced approach and would leave AT&T with unlimited liability for end user claims that result from SWBT's negligence.			
4. Indemnification AT&T: Whether AT&T should be required to indemnify SWBT for end user claims that are based on SWBT's negligence. SWBT: Should each party indemnify the other party against claims made by the indemnifying party's end users except in cases of gross negligence or intentional or willful misconduct?	Terms & Conditions, Section 7.3.1.1.	SWBT's bolded language should be excluded. The issue of Limitation of Liabilities, was arbitrated, as shown by the Commission's ruling at p.53, and that ruling does not stand for the proposition advanced by SWBT, which is that AT&T must assume As discussed above under Limitation of Liability (see Issue No. 3.b.), SWBT seeks to require AT&T to indemnify SWBT, without any limit of AT&T's liability, against SWBT's own negligence for all end user claims. This is an unreasonable and discriminatory requirement. The effect is to leave AT&T entirely responsible for any claims that might be made against AT&T, SWBT or both, by AT&T's end users, including those that are caused by SWBT's negligence in providing the services under this Agreement. SWBT, not AT&T, controls the acts and omissions of its employees, agents,	See agreed-upon Terms and Conditions Section 7.3.1. AT&T objects to inclusion of SWBT's language on this issue.	AT&T is in a position to contractually limit its liability to consumers for negligent actions in the same way SWBT does today. Costs of liabilities for such negligence are not factored into SWBT's retail or wholesale prices today.	**7.3.1.1 In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and indemnify the other party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the intentional or willful misconduct of the other (Indemnified) Party.**

Key: **Bold & underline represents language proposed by AT&T and opposed by SWBT.**
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		and contractors. Yet AT&T would bear the entire responsibility for SWBT's negligence in this respect. The agreed-on Terms and Conditions Section 7.3.1 referenced by AT&T represents the normal, commercially reasonable type of indemnification provision which should apply here. Essentially, it calls for each party to indemnify the other for the wrongdoing caused by that party. SWBT's proposal, which would completely alter this balanced approach in the case of end users, should be rejected.			
5. Poles, Conduits and Rights-of-way Liability and Indemnification Provisions Whether the General Terms & Conditions portion of the Agreement should be revised to include liability and indemnification provisions, previously disputed in the "Poles" Attachment, which differ from or are already covered by previously-agreed on Terms & Conditions concerning those same subjects.	Terms and Conditions, Sections 7.6.1 through 7.6.18 (These sections do not appear because SWBT has withdrawn its language.)	SWBT's proposal that the "Poles" appendix should include a host of liability and indemnification provisions which differ from and conflict with those contained in the Terms and Conditions portion o the Agreement was squarely rejected by the Commission at p. 50 of the Order. SWBT's attempt now to include the same rejected provisions in the Terms and Conditions is inconsistent with the meaning and intent of the Award. In the Arbitration Award (p. 50), the Commission determined that as to matters such as indemnification and limitations of liability, the General Terms and Conditions section of the Agreement should be applicable to all aspects of the Agreement, including the "Poles" appendix. SWBT's response to this ruling by the Commission has been to import more than 7 entire pages of lengthy indemnification and liability	AT&T objects to inclusion of SWBT's proposed language. Please refer to agreed-on Sections 7.3.1, 7.3.4 and 7.1.3.	SWBT's language in the mentioned paragraphs are absolutely necessary for the protection of both parties' interests. However, this specific issue was not originally arbitrated and should be the subject of further negotiations.	

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		provisions which AT&T disputes, adapted from the "Poles" Attachment, into the General Terms & Conditions portion of the Agreement. AT&T does not believe that this was what the Commission intended by its ruling. In any event, AT&T does not believe that any of this SWBT proposed language should be included. Most of it collides with previously agreed-upon liability and indemnification provisions contained in the General Terms & Conditions, and what little does not conflict is either already covered by other provisions of the General Terms & Conditions or adds nothing of value. In the following portions of this column, AT&T will discuss the sections proposed by SWBT. As a general proposition, all of SWBT's proposed language in these sections (as in numerous other instances scattered throughout the Agreement), reflects a common theme: to exonerate SWBT from its own negligence, potentially including intentional misconduct and gross negligence as well. In most cases, the device SWBT employs to achieve this goal is to assign responsibilities (or to avoid them) according to the type of claimant involved, the type of claim, the presence of a party at a particular place or the doing of a particular thing. The problem with this approach is that it would eliminate entirely SWBT's conduct, acts or omissions, from the equation which would otherwise determine			

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		liability and indemnification responsibilities. Because in other portions of the Terms & Conditions (see Sections 7.3.1 and 7.3.4) the conduct of the parties is the key determinate for liability and indemnification responsibilities, these SWBT proposals conflict with the way the Agreement is supposed to work in all other areas. Moreover, no legitimate justification exists to treat outside plant occurrences in ways which are different from the way that liability and indemnification responsibilities are treated elsewhere in the contract. Indeed, the opposite is true. The following discusses the specific sections involved. SWBT's proposed Sections 7.6.1 and 7.6.2 should be summarily excluded. Written in pleading-type fashion, rather than contract language, they not only add nothing to the document but would in all likelihood create confusion and disputes. Section 7.6.3 begins with an incorrect and untrue premise, the purpose of which is to assign AT&T the status of an "independent contractor in control of the premises." These provisions are designed to make AT&T responsible for anything that happens in these areas, including things that happen for which SWBT might otherwise be at fault and responsible. Among other things, in the "Poles" Attachment SWBT seeks to require AT&T to follow very precise and specific SWBT rules and procedures for a number of activities.			

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		SWBT, not AT&T, may well be "in control" as to an activity that occurs at such a time, yet this provision might say otherwise. But more importantly, the notion that AT&T is in control of premises which are, in fact, owned and controlled by SWBT is nonsense. The facts of each particular case, and the acts and omissions of the parties, should govern responsibilities as to liability and indemnification, as otherwise provided in the General Terms & Conditions of the Agreement. This section should not be included. Section 7.6.4, which is linked to Section 7.6.3, would place the duty to prevent workplace injuries on the party in control of the premises. As indicated above, Section 7.6.3 seeks to shield SWBT from any responsibility for its conduct that it might otherwise have in this respect, and 7.6.4 is defective for the same reason. Section 7.6.4 also would have each party indemnifying the other from injury on or in the vicinity of conduits. Such a provision evidently seeks to cancel out any other applicable indemnification procedures. This section also provides that each party is responsible for its own employees' injuries, claims, etc. While, of course, each party is responsible for paying workers compensation claims, this provision seeks to shield SWBT from an injured AT&T employee's claim that SWBT might have been negligent. Again, at the core of this section is SWBT's notion that the			

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		party who is at fault is not the party which has responsibility. This section should not be included. Section 7.6.5 first contains provisions stating that neither party has contractual liability to any employees or contractors, and that there are no third party beneficiaries. These aspects are already covered in Sections 40.0 and 27 of the Terms & Conditions. However, this section then goes on to require AT&T's indemnification of SWBT for all claims by AT&T's employees, and subcontractors, as to matters covered by this Agreement. Again, this seeks to exonerate SWBT from its own negligence, by forcing the responsibilities to be driven by the status of the claimant, rather than fault. This conflicting section should not be included. Section 7.6.6 is very similar to Section 7.6.5, except here the focus is on vendors and customers. That portion of this section which states that the Agreement does not create contractual relationships is, again, already covered by other provisions of the Terms & Conditions. The section then goes on to require indemnification for all contractor claims, which is another attempt to exonerate for negligence under a "status" approach. It would also place responsibility for indemnification as to end users upon whose end user brought the claim, which again overlooks entirely the concept of fault and wrongdoing.			

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		This conflicting section should not be included. Section 7.6.7 is a somewhat opaque section which at least in part appears to be redundant. It essentially says that neither party indemnifies the other for claims by its own employees, contractors, etc., if the claim arises out of the subject matter of the Agreement. This appears to be yet another way of exonerating SWBT from its own negligence or other wrongdoing, and this section should not be included. Section 7.6.8 appears to be another redundant paragraph which would have liability and indemnification responsibilities driven by a connection with each party's respective employees, if they are doing something in the vicinity of conduit, poles, etc. This is yet another attempt to avoid responsibility from wrongdoing, and instead drive liability and indemnification based upon the status of the person performing the act which was connected with the claim. The meaning of the last sentence in this section is intended to further inappropriately limit indemnification responsibilities. This section should be rejected. Section 7.6.9 is another "pleadings-style" paragraph which adds nothing except potential disputes and confusion. Its apparent aim is to lead into three following sections, dealing with environmental matters, which			

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		are discussed below. Sections 7.6.9.1 - 7.6.9.4 are indemnification provisions concerning environmental matters. Each of these sections suffers from the same fatal flaw, which is to require AT&T to indemnify SWBT if AT&T's employee violated any applicable law or provision of this Agreement, or if a release, discharge, removal or disposal of any hazardous substance was accomplished by AT&T, and would require neither party to indemnify the other from any liability, fine, etc. for which the other is responsible under applicable law. Once again, missing entirely is the concept of fault or wrongdoing. Moreover, in the area of environmental law, in some jurisdictions a party who is otherwise blameless nevertheless can be held responsible to the government (so-called "status liability"). Responsibility to the government does not necessarily mean indemnification of SWBT by AT&T, nor does it mean that SWBT should be shielded from indemnification responsibilities that might otherwise arise. Last, please refer to the discussion of this same type of issue, which is focused on broad language in the Agreement, at Issue No. 11. The dispute should be resolved there, not here. This section should not be included. Section 7.6.10, which deals with miscellaneous claims, appears to be inconsistent with two other sections			

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		of the General Terms & Conditions which cover the subjects addressed. First, this section would require indemnification for taxes, municipal fees, etc. Provisions dealing with broad issues such as these are covered in Section 12,, entitled "Taxes." More significantly, the requirements contained in this section are inappropriate because they would place all responsibility for such fees on AT&T if AT&T merely placed facilities. The provision might be worth considering if it was limited to such fees as were applicable only due to such placement by AT&T. But in any case such matters are part of SWBT's overhead and raise pricing issues not appropriately addressed in this context. Last, this section also deals with claims relating to intellectual property rights. Such matters are covered already in Section 7.3.2 of the General Terms & Conditions, which is in dispute. The dispute in this respect should be resolved there, not here. Section 7.6.11 states the obvious, which is that everything not covered by these sections is covered by the General Terms & Conditions. In AT&T's view it should state that all of these sections are already covered, in an appropriate way, by the General Terms & Conditions section of the Agreement. Section 7.6.12 requires parties to "diligently" assert limitation of liability provisions for any claim. This provision is inappropriate. First, each			

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		party would be required to blindly follow any tariff or contract provision, without knowing what it said. Further, this provision could stifle settlements; a party might want to settle some claim for a small amount, yet under this provision would be required to "diligently" assert a limitation of liability provision. Last, in Section 7.1.3 the Parties have already agreed broadly to provide appropriate tariff protections. This section should not be included. Section 7.6.13, states that the indemnification provisions in specified subsections are not subject to the Agreement's limitations of liability provision. Section 7.1.1 of the General Terms & Conditions excludes specific referenced indemnification sections from the limitations of liability which would otherwise apply. If the Commission decides to include these numerous additional new indemnification provisions in the Terms & Conditions, Section 7.1.1 would also need to be revised. In the first sentence in Section 7.6.14, SWBT disclaims warranting uninterrupted use of poles, conduits and rights-of-way. Considering the context and the focus of SWBT's other provisions, and the relationship of such a statement to the Poles Attachment, this sentence appears to be yet another SWBT premise for exonerating itself from its own wrongdoing, and is not acceptable from AT&T's perspective. The			

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		remainder of this section is most certainly objectionable. It would require AT&T to assume all risk of loss, injury, etc., other than as specified elsewhere. This does not even accord AT&T the lowly status of a trespasser, and is not consistent with the Act or this Commission's requirements. The section then goes on to exonerate SWBT from any responsibility according to the type of claimant and the status it may occupy. Such language is at odds with the concept of fault, which would otherwise govern under the General Terms & Conditions portion of the Agreement. This section then transforms itself into a "Force Majeure" clause (which would shield only SWBT, which is already covered (in reciprocal fashion) under Terms & Conditions Section 13. Section 7.6.15 would exonerate SWBT from any responsibility whatever to AT&T for any injury, loss, etc. that occurred on or near SWBT's poles, conduit, and right-of-way, except as otherwise specifically provided. Yet again, SWBT would be exonerated from its own wrongdoing, except as otherwise provided (which, as shown, is almost never). Sections 7.6.15.1 through 7.6.15.3 seek to exonerate SWBT from its own wrongdoing in yet another way. The technique employed in these sections focuses on "the responsible party". As elsewhere the party who actually caused an injury, and who might otherwise be legally			

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		responsible, is a concept nowhere to be found in these sections. They simply provide yet another way for SWBT to dodge liability. Moreover, Sections 7.6.15.2 and 7.6.15.3 carefully exclude negligent omissions from the category of responsibilities. Basically, what this means is that if SWBT has a pole that is rotten to the core, which SWBT has not inspected or maintained in 25 years, and that pole falls and injures someone, SWBT is not responsible (it would claim that that was a negligent omission). None of these sections should be included. Section 7.6.15.4 - See the immediately preceding discussion. Section 7.6.16. - This section evidently would allow SWBT to avoid problems if the numerous liability exonerations which appear above were not lawful in this state. Such language is of no value. Section 7.6.17 - This provision states the obvious (that neither party foregoes their right to make claims against third parties) and is unnecessary. Section 7.6.18, the last of the "Poles" sections (but one which is referenced in several other sections discussed previously), would provide SWBT with still more ways to deny that it has any indemnification responsibilities to AT&T. This section basically says that SWBT will not indemnify AT&T if SWBT can			

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		claim: a) any breach of the Agreement regardless of materiality or relevance; b) AT&T's employee violated any law; c) AT&T's employee acted intentionally or was grossly negligent in any degree, and was the "sole producing cause." This section, as with all the other associated sections, is but a testament to SWBT's diligence in seeking ways to avoid indemnification responsibilities which are not controlled by SWBT's wrongful conduct. This section should not be included. In summary, it is abundantly clear that SWBT has little regard for the 1996 Act's requirement to allow nondiscriminatory access to SWBT's poles, conduit and rights-of-way. Through these proposed provisions, SWBT would treat its responsibility toward AT&T than it would if AT&T were a trespasser. Under these provisions AT&T, its employees and contractors would enter upon SWBT's poles, conduit and rights-of-way at their peril, for not only would SWBT would owe them no due care, in most instances it would owe no duties at all, and AT&T would be required to indemnify SWBT for its misconduct. None of these provisions should be included in the Agreement. The Agreement already contains commercially reasonable, workable liability and indemnification provisions which embody the concept of fault and wrongdoing, as they should. SWBT's attempts to avoid any notion of responsibility for those			

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		who would access its premises should be rejected and SWBT's language should be excluded in its entirety.			
6. Other Limitation of Liability and Indemnification Provisions AT&T: Whether SWBT should be allowed to avoid any responsibility for AT&T end user claims caused by SWBT's negligence, and for other third party claims, and related issues. SWBT: Whether special circumstances warrant additional language regarding liability provisions in other sections of the Agreement.	Appendix DA-Resale 6.1 - 6.4; Appendix OS-Resale 14.1 - 14.4; Appendix WP-Resale 5.1-5.3; Attachment 15: 911 7.1; Attachment 18: Mutual Exchange of Directory Listing Information 8.1 - 8.2; Attachment 19: WP-Other 7.1 - 7.2; Attachment 22: DA-Facilities Based 9.1 - 9.3; Attachment 23: OS-Facilities Based 9.1 - 9.3 Attachment 6: UNE 7.2.8, 7.3.7, 9.5.3.10.	AT&T's bolded and underlined language should be included and SWBT's bolded language should be excluded. Prefatory Note: The issue of Limitation of Liabilities, was arbitrated, as shown by the Commission's ruling at p.53, and that ruling does not stand for the proposition advanced by SWBT, which is that AT&T must assume the risk of SWBT's negligence. In addition to SWBT's attempts to include language in the Terms and Conditions which would impose on AT&T all responsibility for SWBT's own negligence in performing under this Agreement, especially as to claims by AT&T's end users, SWBT has proposed additional language, which would have similar effects, in eight separate appendices or attachments to the Agreement. In each case AT&T's proposed language, consisting of a single sentence which states that such matters are governed by the Terms and Conditions, is identical or nearly so. However, SWBT employs three variations of its proposed language among these eight attachments/ appendices. To facilitate the Commission's review, AT&T has analyzed each and finds that the language employed for four attachments/ appendices is virtually	**Indemnification and limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of the Agreement.** (The foregoing AT&T language appears in all the referenced sections.)	This issue relates to the fact that the limitation of liability provisions contained in terms and conditions relates essentially to network outages. Specific characteristics of other sections of the Agreement dictate that special provisions be included in those sections. These other sections cover directory assistance, operator services, 911, white pages and UNEs. Many of these sections deal with potential failures unrelated to a network outage. For example, in operator services and directory assistance, data from multiple sources must be managed with significant manual intervention. SWBT cannot control the accuracy of each of the data sources that support millions of transactions each year. For CNAM, the calling name is provided from the LIDB database. SWBT is in no position to guarantee the accuracy of calling name information in that database. SWBT should not be held liable for inaccuracies that were provided by another company. These are just a few examples of reasons why limitation of liability language is needed in these other sections of the Agreement and why negotiations should be allowed to continue on this issue.	SWBT objects to the inclusion of AT&T's proposed language.

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		identical, and that the language for three others is also virtually identical. In discussing the issue, AT&T will display the language of only one attachment or appendix involving each of the three variations. The explanation provided below is applicable to all SWBT language, in all of the referenced attachments or appendices. In addition, SWBT has proposed similar provisions in other Attachments, which are addressed in the Disputed Issues Matrix associated with those attachments. Discussion: As AT&T's language indicates, matters involving limitations of liability and indemnification obligations are covered in the General Terms & Conditions section of the Agreement. Those provisions essentially hold each party responsible for its own wrongdoing. Neither party's liability is otherwise limited for its own negligence in connection with any third party claims, including end user claims. Likewise, each party is required to indemnify the other for its own wrongdoing. AT&T's language leads to consistent results, whereas SWBT's could lead to different interpretations for different attachments to the Agreement. Making the Agreement more complex is hardly desirable. In short, AT&T's language incorporates fair, commercially reasonable, non-			

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		discriminatory and consistent provisions, and should be included. In contrast, SWBT's provisions seek to eliminate any responsibility on SWBT's part for SWBT's negligence in providing the services under this Agreement. They would place all of the risks on AT&T. This is not only commercially unreasonable but unfair and contrary to the Act's requirements that the services be provided to AT&T in a nondiscriminatory fashion. Both parties have otherwise agreed that their tariff limitation of liability provisions in connection with customer claims will be asserted for the benefit of the other party. It is unreasonable and, in AT&T's view, unlawful to require AT&T to be responsible for SWBT's negligence. All of the SWBT provisions in question should be excluded from the Agreement, and AT&T's language should be included.			
7 Interference with Other Contracts. Whether AT&T should be required to attest that this Agreement does not interfere with any other contractual relationships it has with any other party, and that it will indemnify SWBT against any such claims.	Terms and Conditions Section 7.3.5 (This section does not appear because SWBT has withdrawn its language.)	SWBT's proposal to condition the Agreement upon AT&T's being forced to indemnify SWBT if the Agreement interferes with other contracts involves an issue that is the subject of the arbitration by implication under the Act. The Commission should resolve the issue by rejecting SWBT's proposal as being inconsistent with the Act. SWBT proposes language which would require AT&T to attest that the Agreement does not interfere with	AT&T objects to inclusion of SWBT's proposed language.	SWBT will not know what kinds of contracts AT&T may have with other providers that may have language or provisions in conflict with SWBT and AT&T's contract (e.g., a third party's contractual right to be the exclusive provider of service to AT&T). SWBT's proposed language protects SWBT from possible litigation from third parties, should such conflicting arrangements exist. AT&T is in a better position than SWBT to know if such contracts exist and to take steps to ensure the third party's	7.3.5 **Each party represents that the terms of this agreement do not interfere with any other contractual arrangement(s) which each party may have with any third party. Each party to this agreement agrees to indemnify the other party to this agreement for any and all causes of action, claims, demands or suits which may be made or brought by a third party, claiming that this agreement interferes with an existing contractual relationship between a**

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		any contractual arrangement with any other party, and that it will indemnify SWBT if such a claim is brought. This SWBT proposal should not be included. As in a number of other instances in the Agreement, SWBT appears to view the requirements of the Act and of the associated Interconnection Agreement as being inferior to other contracts, relationships or arrangements it may have. Here AT&T would be required to indemnify SWBT if the Interconnection Agreement is claimed by a third party to be an interference with some other contract SWBT might have had with that third party. The Federal Act's scope and sweep is broad and paramount. It is not a nuisance which SWBT must tolerate and as to which AT&T must protect SWBT from any possible implications. If a third party claims that this Agreement interfered with its contractual relationship against one of the parties, then that party can and should resist that claim by virtue of the Act's provisions. The Act should override such claims. SWBT, however, would have AT&T act as an insurer against such claims, a proposition which is both unreasonable and contrary to the Act. SWBT's proposed language should not be included.		rights are not violated. AT&T attempts to shift this risk to SWBT.	**third party and a party to this agreement.**
9. Dispute Resolution Procedures	Terms & Conditions 9.5.2 and 9.5.3	The bolded language should be excluded from Section 9.5.2, and the bolded and underlined language	9.5.2 **Dispute Resolution Procedure (DRP) 2** - Except as otherwise specifically set forth in the	SWBT's proposed language is designed to ensure that the dispute resolution provisions in the	**9.5.2 Dispute Resolution Procedure (DPR) 2** - Except as otherwise specifically set forth in the

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Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
AT&T: Whether mandatory arbitration provisions *should apply to issues* involving matters not specifically addressed elsewhere in the Agreement which require renegotiation, modifications of or additions to the Agreement. SWBT: Should the parties be forced to resort to the dispute resolution procedures contained in the Agreement concerning matters which require renegotiation or modification of the Agreement?		contained in Section 9.5.3 should be included. This issue involves the matter of modifications to the Agreement, which is a subject of the arbitration by necessary implication, and by the Commission's ruling in the last *paragraph* under XII, p.53, of the Order concerning changes to the Agreement. Section 9.5.3 would require binding *arbitration for disputes involving* additions to this Agreement, and matters requiring renegotiation and modifications to the Agreement. The last sentence in Section 9.5.3 would ensure that these types of disputes may be placed before an arbitrator within 60 days. This language should be included. At the time the FTA was adopted, few if any expected that multiple arbitrations might be necessary in order to achieve workable Interconnection Agreements. The reality is that such a need exists. AT&T is mindful of the Commission's limited resources and its receptiveness to requests for additional arbitration. At the same time, AT&T needs to be able to have prompt rulings made on significant issues, particularly those involving needed additions to the Interconnection Agreement. For this reason, AT&T has proposed the language contained in Section 9.5.3, and to make those provisions effective has proposed removing the bolded language in Section 9.5.2 (otherwise, such matters would be	Agreement, for all other disputes involving matters which represent more than one (1) percent of the amounts charged to AT&T by SWBT under this Agreement during the Contract Year in which the dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute, [SWBT language withdrawn] then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided that upon mutual agreement of the Parties, the dispute may be *submitted to binding arbitration* under Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year. **9.5.3 Dispute Resolution Procedure (DRP) 3 - Except as otherwise specifically set forth in this Agreement, for all disputes involving matters not specifically addressed elsewhere in this Agreement which require renegotiation or modifications of or additions to this Agreement, the Parties agree that the dispute will be submitted to binding arbitration under Section 9.6 of this Agreement. The Parties agree that the sixty (60) day informal resolution period provided in Section 9.3.1 will be deemed to have commenced at the time the demand for arbitration is made.**	Agreement do not deprive the parties of remedies they would otherwise have pursuant to law, equity, or agency mechanisms in case of disputes over matters not specifically addressed in the Agreement or that require renegotiation or modification of the Agreement. SWBT wants to treat such disputes in the same way that the parties have agreed to treat disputes, including mere billing disputes, involving matters which represent more than one percent of the amounts charged to AT&T by SWBT under the Agreement during the contract year in which the dispute arises. AT&T, on the other hand, attempts to make all such disputes subject to binding arbitration. Such a result might usurp the Commission's role on major issues and place the responsibility for resolution with an arbitrator who may or may not be *familiar with* telecommunication issues.	Agreement, for all other disputes involving matters which represent more than one (1) percent of the amounts charged to AT&T by SWBT *under this Agreement during* the Contract Year in which the dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute, **or matters not specifically addressed elsewhere in this Agreement which require renegotiation or modification of this Agreement,** then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided that upon mutual agreement of the Parties, the dispute may be submitted to binding arbitration under Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.

Key: **Bold & underline represents language proposed by AT&T and opposed by SWBT.**

Bold represents language proposed by SWBT and opposed by AT&T.

CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		dealt with under DPR 2 procedures). Thus, the deletion of language in Section 9.5.2 is necessary to ensure that the matters involved in Section 9.5.3 are required to go to binding arbitration.			
10.Local Exchange "Slamming" AT&T: Whether certain specific provision should be included in the Agreement dealing with local exchange switching/slamming issues, prior to the FCC's or this Commission's adoption of rules governing those subjects. SWBT: Should the parties be required to strictly follow federal rules applicable to interexchange carriers concerning end user challenges to changes in its local exchange provider? Should either party be prevented from immediately complying with an end user's request for service? Should the parties be obligated to investigate allegations of slamming on behalf of the other party or a	Terms and Conditions, Section 17.2 (One of SWBT's provisions would constitute an additional Section 17.4).	SWBT objects to language it has agreed to in other states in Section 17.2, proposes to add certain specific provisions to that section, and to add a new section, all dealing with the local exchange carriers selection process. The Commission made specific rulings on certain procedures involving customers changing local companies at p. 11 of the Order. The issues of the appropriate general procedures to follow for switching local customers and in connection with local exchange "slamming" concern matters that were the subject of the arbitration by necessary implication. First, the bolded and underlined language in Section 17.2 would employ the current federal "slamming" rules applicable to IXCs for local exchange purposes, until applicable local exchange rules are implemented. SWBT agreed to this language in other states, but now objects to it. SWBT's proposal following the end of Section 17.2 would allow end users' notification to either AT&T or SWBT to allow the party receiving the request to immediately begin providing service. It also would permit SWBT to connect an end user to another LSP	17.2 Only an end user can initiate a challenge to a change in its local exchange service provider. **In connection with such challenges each Party will follow procedures which conform with federal rules regarding challenges to changes of presubscribed interexchange carriers until such time as there are federal or state rules applicable to challenges to changes of Local Exchange Service Providers. Thereafter, the procedures each Party will follow concerning challenges to changes of local exchange service providers will comply with such rule.**	AT&T proposes to follow procedures which conform to federal rules regarding challenges to PIC changes. Industry experience has shown, however, that these rules have done little to curb slamming on the federal level. SWBT's language is designed to ensure that SWBT and AT&T can honor the express wish of a customer by providing immediate service upon receipt of the customer's request. In addition, SWBT language is consistent with the slamming provisions contained in Act 77.	17.2 Only an end user can initiate a challenge to a change in its local exchange service provider.

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Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
third party?		based on the LSP's request and assurance that end user authorization has been obtained. Yet another provision would oblige neither party to investigate allegations of slamming by the other or a third party, but would allow the parties to agree to make such investigations for a fee. AT&T's bolded and underlined language should be included and SWBT's proposals should be excluded. As this Commission knows, the FCC is in the process of formulating rules which will apply to the local exchange carrier selection process and, in all likelihood, slamming issues. All of SWBT's proposals in this respect are premature because they could well be inconsistent with the rules that are ultimately established. The fact is that existing federal IXC rules on such issues should control until local exchange rules are established. Finally, SWBT's position that parties have no obligations to investigate allegations of slamming, but the parties could agree to so investigate for a fee, is not necessarily an outlandish proposition. Again, the problem with it is that it may not be consistent with the rules which are ultimately determined to be applicable to this situation. In short, SWBT's proposals are premature because they may not be consistent with applicable rules, and should not be included. AT&T's proposed language should be included.			

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CONTRACTUAL DISPUTED ISSUES MATRIX
AT&T-SWBT INTERCONNECTION AGREEMENT - ARKANSAS
TERMS & CONDITIONS AND VARIOUS RELATED PROVISIONS

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
11. Responsibility for Environmental Contamination AT&T: Whether language in the Agreement should imply that AT&T may be responsible to SWBT for the presence or Release of Environmental Hazards, at an affected Work Location that were introduced by a third party. SWBT: Should liability between the parties concerning the presence or release of environmental hazards at an affected work location conform to existing environmental laws? Should either party be entitled to indemnification from the other party in cases involving environmental contamination, where the party seeking indemnification caused or contributed to the loss?	Terms & Conditions 39.1 and 39.2	SWBT's proposed language should not be included. The Commission made certain express rulings concerning notifications of known environmental hazards at p. 44 of the Order, and should rule on this unresolved issue as a matter of necessary implication. Sections 39.1 and 39.2 contain mirror-image first sentence statements to the effect that a party is not liable to the other party for costs associated with the presence or release of environmental hazards that the party did not introduce to, or knowingly use, at the Work Location. SWBT objects to this language and would add language which would omit the "knowingly use" aspect. Its absence, in the context of other provisions in these sections, implies that AT&T might be liable to SWBT for the presence or Release of an environmental hazard that AT&T did not introduce, if AT&T or its agents cause or contribute to a release. SWBT's position is inappropriate. The party who controls access to its premises is in the best position to know what hazards may exist. If an environmental hazard was introduced to a Work Location by some third party and the Work Location then was purchased by SWBT, under SWBT's language SWBT might argue that AT&T is responsible to SWBT if AT&T or its agents unknowingly released the hazard. In contrast, AT&T's proposed language	39.1 **AT&T will in no event be liable to SWBT for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that AT&T did not introduce to, or knowingly use, at the affected Work Location.** SWBT will indemnify, defend (at AT&T's request) and hold harmless AT&T, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that SWBT, its contractors or agents introduce to the Work locations or (ii) the presence or Release of any Environmental Hazard for which SWBT is responsible under applicable law. 39.2 **SWBT will in no event be liable to AT&T for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that SWBT did not introduce to, or knowingly use, at the affected Work Location.** AT&T will indemnify, defend (at SWBT's request) and hold harmless SWBT, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that AT&T, its contractors or agents introduce to the Work	SWBT's proposed language relieves AT&T from liability to SWBT for any costs resulting from the presence or release of any environmental hazard which SWBT has introduced to the affected work location. However, AT&T desire to go beyond this and relieve itself from any liability to SWBT in all cases where the environmental hazard was either introduced at the work location by a third party used by AT&T. SWBT does not believe that AT&T's proposed language comports with applicable environmental law.	39.1 SWBT will indemnify, defend (at AT&T's request) and hold harmless AT&T, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that SWBT, its contractors or agents introduce to the Work locations or (ii) the presence or Release of any Environmental Hazard for which SWBT is responsible under applicable law. 39.2 **SWBT will in no event be liable to AT&T for any costs whatsoever resulting from the presence or release of any environmental hazard which AT&T has introduced to the affected work location.** AT&T will indemnify, defend (at SWBT's request) and hold harmless SWBT, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from) any Environmental Hazard that AT&T, its contractors or agents introduce to the Work Locations or ii) the presence or Release of any Environmental Hazard for which AT&T is responsible under applicable law.

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Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
		is focused upon a party's actual introduction or knowing use of a hazard. Further, a minority of jurisdictions may affix responsibility to the government based on a party's mere status. Such potential "status" responsibility to the government (addressed in (ii) of the agreed-upon portion of this Section) should not allow AT&T also to become responsible to SWBT under the circumstances addressed here. Therefore, SWBT would also add language which allowing it to avoid entirely my indemnification responsibilities if AT&T caused, or contributed to any loss, claim, etc., in the slightest degree. This language would ignore SWBT's own conduct. SWBT's proposed language should be excluded and AT&T's proposed language should be included.	Locations or (ii) the presence or Release of any Environmental Hazard for which AT&T is responsible under applicable law.		

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CONTRACTUAL DISPUTED ISSUES MATRIX
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RESALE AND MISCELLANEOUS ISSUES

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
5. Aggregating multiple AT&T customers: Whether AT&T may aggregate multiple AT&T customers.	Appendix Services/Pricing Section 2.1.3	• Issue number 5, "What Resale Restrictions should be permitted, if any?" in the Arbitration Award, page 9, states that AT&T's LBO complies with the FCC Order and is approved. The FCC's First Report and Order, Para., 953 specifically found that a new entrant may aggregate the traffic of more than one end user in order to meet minimum volume requirements. • AT&T believes the Arbitration Award follows the Act and the FCC's First Report and Order, which establishes that all restrictions on the resale of telecommunications services are inapplicable, other than the restriction on cross-class selling. SWBT has not provided sufficient evidence to rebut the presumption that its restrictions are unreasonable. The restriction on aggregation of customers unreasonably restricts AT&T's ability to resell SWBT's services, and AT&T's language should be included.	**2.1.3 AT&T may aggregate multiple AT&T Customers on dedicated access facilities. AT&T will pay the rates for DS-1 termination set forth herein for such service.**	AT&T can only aggregate customers on dedicated access facilities where allowed to do so under the provisions of the access tariffs. AT&T's proposed language is an attempt to alter the existing access tariff structure outside the scope of a proper proceeding to do that. Furthermore, to allow AT&T to violate the provisions of the access tariff structure would be giving them an unreasonable and discriminatory advantage over other competitors and users of those tariffs.	SWBT objects to the inclusion of AT&T's proposed language in 2.1.3.

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RESALE AND MISCELLANEOUS ISSUES

Issue:	Attachment and Sections	AT&T Reason why language should be included or excluded	AT&T Language	SWBT Reason why language should be included or excluded	SWBT Language
6. Pay phone issue Whether SWBT will forward upon request special designated call traffic types to the AT&T specified lines or trunks.	**Appendix Services/Pricing** Section 10.9	• Issue number III. 1 on page 20 of the Award addresses whether SWBT should be required to customize the routing of OS/DA calls to AT&T's platforms where AT&T purchases resold services. When AT&T is purchasing SmartCoin lines in a resale environment, customized routing applies. AT&T's language is important because it relates to the overall practice of implementing the customer owned pay telephone service market. AT&T wishes to route traffic over a specially designated AT&T line or trunk for call handling. This enables AT&T to route traffic to its own operator services platform and allows for future network requirements. This provides end-to-end AT&T customer service, meets AT&T's marketplace needs, and is part of an overall effort by AT&T to provide the type of customer service AT&T's end-users have grown to expect and depend on when away from home.	**10.9 SWBT will forward all local coin calls originated from AT&T resold COPTS and SmartCoin lines to the designated AT&T line or trunk group for handling.**	AT&T's request to have this designated traffic routed in this manner is purely a desire on their part, but conflicts with the legal authority on point. Pursuant to 47 USC Section 271(e)(2)(D) and the Arbitrator's order, Southwestern Bell is not obligated to route 1+ and /or O+ intraLATA toll calls to AT&T for handling at this time. As a result, AT&T's language should not be included in the Agreement.	SWBT objects to the inclusion of AT&T's proposed language.
7. Pricing: Whether the rates are interim rates until the determination of	**Appendix Services/ Pricing** Section 15.0-15.2.2 (OSSs) **Appendix DA**	• This issue was arbitrated as found on page 34 of the Award. AT&T's language follows the intent of the Arbitrator's Award which is that the rates that have been determined by the Commission	**Appendix Services/Pricing** **15.0 AT&T will pay the rates as determined by the State Commission or as the Parties may otherwise agree.**	AT&T has clearly misunderstood the Commission's Order No. 5. There are no provisions for a cost docket of the kind wanted by AT&T. The Commission approved SWBT's cost methodology with two minor	SWBT objects to the inclusion of AT&T's proposed language

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